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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/106,519	06/29/98	MCCLOGHRIE	K CIS-044

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EXAMINER

PHUNKULH, B

ART UNIT

PAPER NUMBER

2661

DATE MAILED:

07/05/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No.	Applicant(s)
	09/106,519	MCCLOGHRIE ET AL.
	Examiner	Art Unit
	Bob A. Phunkulh	2661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 21 February 2001.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-22 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-22 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are objected to by the Examiner.

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____ .
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) Notice of References Cited (PTO-892)

16) Notice of Draftsperson's Patent Drawing Review (PTO-948)

17) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5-10.

18) Interview Summary (PTO-413) Paper No(s) _____ .

19) Notice of Informal Patent Application (PTO-152)

20) Other: _____ .

DETAILED ACTION

This communication is in response to applicant's 02/21/2001 amendment/responses in the application of **McCLOGHRIE et al.** for "**SAMPLING PACKETS FOR NETWORK MONITORING**" filed 06/29/1998. The amendments/response to the claims have been entered. No claims have been canceled. Claim 22 has been added. Claims 1-22 are now pending.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3-6, 11-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 3 and 22, it is not clear the function of "a frequency measurement element" as cited in line 7 of claim 3, and lines 8-9 of claim 22.

Regarding claim 9, it is not clear what it meant by "measuring a frequency of packets" as cited in lines 3.

Regarding claim 11, it is not clear what it meant by "measuring a frequency of packets" as cited in lines 1-2.

Claim Rejections - 35 USC § 102

Art Unit: 2661

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1 and 2 are rejected under 35 U.S.C. 102(e) as being anticipated by Watanabe (US 5,771,231).

Regarding claims 1-2, Watanabe discloses an ATM exchange having an ATM switch for switching a cell comprises of: a call processor, and a traffic processor 15 for collecting traffic data in a subscriber line connected to the subscriber via a user network interface (UNI) or traffic data in a transmission line connected to a network via a network node interface (NNI). The traffic being split between these processors to reduce the load upon the call processor –thus the call processor maintaining relatively constant load (see fig. 1 col. 5 to col. 6 line 9).

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 7-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Lo (US 5,559,801).

Regarding claims 7-21, Lo discloses a method for sampling packets by a programmable packet sampling apparatus in a network management system. The method includes receiving packets from a plurality of input ports, and selecting packets for sampling, by a packet sampler 75, sampling data packets based on predetermined values or sampling values, and outputting a disrupt data packet. The sampler 75 includes a queue 100 for storing selected packets, and a queue controller 112 for controlling the queue 100 (see figs. 5-6, and col. 5 line 1 to col. 6 line 13).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-6, are rejected under 35 U.S.C. 103(a) as being unpatentable over Lo in view of Kamishima (US 5,646,959).

Regarding claims 3-6, Lo fails to disclose the sampling system includes a packet-type detector. Kamishima, on the other hand, discloses a terminal adapter located between a terminal equipment unit and a data communication network includes at least one packet type detector for detecting packet type based on the packet header. Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention was made to provide the packet type detector in the system taught by Lo

for determining whether the incoming packet is 802.3 data packet or ethernet packet or any other packet –thus the receiving units can process the packets accordingly.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lo-Kamishima in view of Watanabe.

Regarding claim 22, the combination of Lo-Kamishima fail to disclose collecting aggregate information of a network traffic, and maintaining constant load.

Watanabe, on the other hand, teaches collecting aggregate information of the ATM network traffic and maintain constant load by the two processor (see above rejection). Although Watanabe's teaching is base on ATM network, it teaching can be implement on any communication network. Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention was made to implement the teaching of Watanabe in the system taught by the combination of Lo-Kamishima for continue monitoring network bandwidth and load –thus one can avoid overloading the communication network.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

(703) 305-9051, (for formal communications intended for entry)

Or:

(703) 308-5403 (for informal or draft communications, please label
"PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2021
Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Bob A. Phunkulh** whose telephone number is **(703) 308-8251**. The examiner can normally be reached on Monday-Friday from 8:00 A.M. to 4:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor **Douglas W. Olms**, can be reached on **(703) 305-4703**. The fax phone number for this group is **(703) 872-9314**.

Bob A. Phunkulh

Bob A. Phunkulh

TC 2600
Art Unit 2661
June 29, 2001

ajit Patel
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Primary Examiner